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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	
Plaintiff,	**Crim. No. 1998-158**
v.	
RAPHAEL FARRINGTON and TERRANCE GROSVENOR,	
Defendants.	

MEMORANDUM

I. INTRODUCTION

Raphael Farrington ["Farrington" or "defendant"] has renewed his motion for judgment of acquittal and moved for a new trial. Following a jury trial, Farrington was convicted of bank fraud ["Count I"], in violation of 18 U.S.C. § 1344, as was co-defendant Terrance Grosvenor ["Grosvenor"], and of money laundering ["Count II"], in violation of 18 U.S.C. § 1957. Farrington contends that the Court made numerous errors which require a new trial on both counts. He also argues that the government failed to prove the required elements to sustain a conviction for money laundering, thus mandating this Court to grant a judgment of acquittal on that count. For the reasons set forth below, the Court will deny Farrington's motion.

II. DISCUSSION

Farrington charges that the Court's decision to deny his pretrial motion to try him separately resulted in undue prejudice. He claims that his company's form, government exhibit 13, the altered Cartech Imports invoice, and government exhibit 21, Grosvenor's handwritten statement to the Federal Bureau of Investigation, would not have been admissible at a separate trial. Farrington also argues that the documents from Citibank, items claimed to be "essential" by his counsel, would have been admissible if Farrington had been tried alone. The Court disagrees that it was error to deny severance.

Farrington signed the Cartech Imports invoice and it would have been admissible against him even if he had been tried separately. Whether or not Grosvenor's statement would have been admitted at a separate trial, its admission here did not prejudice Farrington because it did not explicitly implicate him. Farrington's argument concerning the Citibank documents misrepresents the record. The Court denied his motion in limine to use documents from Citibank as character evidence against Grosvenor under Federal Rule of Evidence 404(b), and

also excluded these documents because they were irrelevant to Farrington's defense.[1] (*See* Transcript of Jury Trial ["Tr."] vol. 1, at 29.) These documents would have been similarly irrelevant if Farrington had been tried alone.

Farrington also maintains that his defense was severely prejudiced by the Court's ruling excluding his proposed expert witness, Dennis Matthews. The defendant's factual premise again does not accurately reflect the record. The Court excluded Farrington's proposed expert because he only gave notice of the intent to call an expert witness on the morning of trial, (Tr. vol. 1, at 5-11), and otherwise failed to comply with Federal Rule of Criminal Procedure 16. The Court informed Farrington, however, that if he would "supply the government, under Rule 16, with a summary of what the witness will be expected to say and provide a copy to the Court," the Court would reconsider its ruling. (*Id.* at 11.) Farrington never provided a summary of Matthews' expected expert testimony as required by Rule 16 to either the government or the Court. He

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[1] Farrington never attempted to introduce the Citibank documents at trial. The Court excluded all of the Citibank documents as irrelevant, both those which allegedly showed that "Grosvenor was involved in widespread fraud at Citibank," (Renewed Mot. for J. of Acquittal and Mot. for New Trial ["Mot. for J. of Acquittal"] at 18), and those which are unrelated to this case but bore Farrington's signature, although Farrington was allowed to use them for impeachment purposes, (*see* Tr. vol. 1, at 27-29).

in fact never raised the issue again with the Court, although Farrington later attempted to proffer Mr. Matthews as a lay witness. (Tr. vol. 3, at 4.) The defendant's lackadaisical treatment of his expert at trial belies his recent assertion that "[i]t is difficult to overemphasize the importance of Mr. Matthew's expert testimony to [his] defense." (Mot. for J. of Acquittal at 18.) The Court also will deny this aspect of Farrington's motion for a new trial.

Farrington failed to object to any instructions after the Court finished reading them to the jury. (*See* Tr. vol. 4, at 131 (The Court called all counsel to side bar after finishing the reading of the jury instructions and no one voiced any objections to the instructions as read.).) He nevertheless now wants to complain that the instructions were improper or inadequate on several grounds. Other than by showing plain error, Farrington has waived his opportunity to object to the instructions. *See* FED. R. CRIM. P. 52(b)("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.") To find plain error, the Court must find: (1) an error where a legal rule has been violated without a valid waiver by the defendant; (2) an error that was clear or obvious; and (3) an error that

must have affected substantial rights of the defendant. *United States v. Olano*, 507 U.S. 725, 732 (1993); *see also Sanchez v. Government of the Virgin Islands*, 34 V.I. 105, 109, 921 F. Supp. 297, 300 (D.V.I. App. Div. 1996) (defining plain error as those errors that "seriously affect the fairness, integrity, or public reputation of judicial proceedings" and finding that "[t]he doctrine is to be used sparingly and only where the error was sure to have had an unfair 'prejudicial impact'"). The asserted errors in the Court's instruction on wilfulness as an element of aiding and abetting, the definition of "criminally derived property" as an element of the charge of money laundering, and the multi-defendant instruction as not curing the prejudice to Farrington caused by the joint trial, were not error at all, let alone clear or obvious error affecting the defendant's substantial rights.

Farrington's final argument is that he is entitled to a judgment of acquittal of money laundering, because the evidence was not sufficient for a jury to convict him pursuant to 18 U.S.C. § 1957. Count II charged as follows:

> On or about February 10, 1997, at St. Thomas, in the District of the Virgin Islands, defendant RAPHAEL FARRINGTON and co-perpetrator Elvis N. David, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commerce, in

> criminally derived property of a value greater than $10,000, such property having been derived from a specified unlawful activity, that is, bank fraud, in that defendant RAPHAEL FARRINGTON, knowing that the funds represented the proceeds of the scheme, wrote Chase Manhattan Bank check No. 1136 in the amount of $17,000 made payable to co-perpetrator Elvis N. David, and co-perpetrator Elvis N. David, knowing that these funds represented proceeds from the scheme, deposited the check at the Bank of Nova Scotia, Account No. 376914.
>
> In violation of Title 18 U.S.C. Sections 1957 and 2.

The government proved at trial that Farrington received the "proceeds of the scheme" in the form of a $20,000 check to Cartech from Citibank ["Citibank check"] dated February 7, 1999, that Farrington deposited into Cartech's bank account at Chase Manhattan Bank ["Chase account"] on February 10, 1997.

Farrington first contends that the government failed to prove beyond a reasonable doubt that he knew the Citibank check was tainted. Farrington then argues that, as a matter of law, he cannot be guilty of money laundering for writing the check for $17,000 to Elvis David ["David"] on the Cartech account because the $20,000 conveyed by the Citibank check was not available in Cartech's Chase account when he wrote the check.

The evidence presented at trial totally refutes Farrington's first assertion that the government failed to prove that he knew the Citibank check represented proceeds of bank fraud. The testimony of David, as well as Farrington's

own testimony, corroborated by the documents admitted in evidence, proved conclusively that Farrington prepared and knowingly signed an invoice for a nonexistent vehicle which he knew David intended to present to Citibank for a loan. (Tr. vol. 2, at 157-61 (testimony of David); Tr. vol. 3, at 111-15 (testimony of Farrington).[2] Based on the evidence presented, the jury was virtually compelled to find that Farrington knowingly executed a fraudulent document as part of a scheme to defraud Citibank of the $20,000 transferred by the Citibank check.

Farrington once again makes the same argument the Court rejected at trial, namely, that the government failed to prove as a matter of law that the $17,000 he transferred to David via Chase check number 1136 was derived from the scheme to defraud Citibank, because the $20,000 Citibank check had not cleared the Chase account when he wrote the check on February 10, 1997. He contends that it was not legally sufficient for the Citibank

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[2] Farrington signed the Cartech Imports invoice dated January 27, 1997, agreeing to the vehicle and financing information filled in on the form. This fraudulent information included that David had paid a deposit when in fact David had not made any payment to Cartech and assigned a Cartech "stock number" to the 1996 Ford truck even though no such vehicle was in Cartech's inventory at that time. (*See* Government's Exs. 7 (Cartech Imports invoice) & 13 (altered Cartech Imports invoice); *see also* Tr. vol. 3, at 111 (Question: "When you signed it, did you have a 1996 Ford on your lot?" Answer (Farrington): "No.").)

check merely to have been deposited; it was necessary for Citibank to have actually transferred the $20,000 to the Chase account. Thus, Farrington argues he could not possibly have laundered the $20,000 from Citibank by giving David a check because the Citibank funds were not yet available in the Chase account on which the check to David was drawn.

According to an assistant treasurer of Chase, the $20,000 Citibank manager's check in question was paid into Cartech's Chase account on February 10, 1997. (Tr. vol. 2, at 253-54, 255.) Cartech's Chase account had a balance of $36,968.39, as of February 10, 1997. (*Id.* at 255-56.) Farrington wrote the $17,000 check (check number 1136) on that same day, February 10th, and Chase took the $17,000 from Cartech's Chase account the next day, February 11, 1997. (*Id.* at 254-55.) Viewing this evidence in the light most favorable to the prosecution, the $20,000 was available in the company's account when Farrington wrote the check to David, and the factual premise for his legal argument fails. Clearly, the government was not required to prove that Farrington used *only* the proceeds of the fraud on Citibank to cover check number 1136. Rather, it needed to prove only that some of the funds used to pay check number 1136 were "proceeds from the scheme." *See United States v.*

Sokolow, 91 F.3d 396, 409 (3d Cir. 1996)(There is no "legal requirement that the government trace the funds constituting criminal proceeds when they are commingled with funds obtained from legitimate sources.") This evidence alone supports the jury's verdict on Count II.

Furthermore, the defendant's legal premise itself fails, even if the Court assumes for the sake of argument that the $20,000 Citibank check had not cleared the Cartech account when Farrington wrote check number 1136 for $17,000 to Elvis David. To prove a violation of the money laundering statute, 18 U.S.C. § 1957, the government must show

> '(1) the defendant engage[d] or attempt[ed] to engage (2) in a monetary transaction (3) in criminally derived property that is of a value greater than $10,0000 (4) knowing that the property is derived from unlawful activity, and (5) the property is, in fact, derived from "specified unlawful activity."'

Sokolow, 91 F.3d at 408 (quoting *United States v. Johnson*, 971 F.2d 562, 568 n.3 (10th Cir. 1992)). Section 1957 defines "criminally derived property" as "any property constituting, or derived from, proceeds obtained from a criminal offense." 18 U.S.C. § 1957(f)(2). The crux of Farrington's argument is that the $20,000 from Citibank did not constitute such "criminally derived property" until the $20,000 was actually paid into and

available in the Chase account.

This simply is not the law and the case Farrington relies upon does not support his construction of the statute. *See United States v. Johnson*, 971 F.2d at 562. *Johnson* stands for the proposition that the criminal activity by which the property or proceeds are obtained, e.g., wire fraud or bank fraud, does not of itself constitute a violation of section 1957. It is necessary for the defendant to do something with the money received by the fraud, that is, to engage in a "monetary transaction" using the criminally derived property. Section 1957 was intended to "apply to transactions occurring after the completion of the underlying criminal activity," and does not "afford an alternative means of punishing the prior 'specified unlawful activity.'" *Id.* at 569. The government lost its section 1957 money laundering counts in *Johnson* because it failed to charge Johnson with using funds obtained from wire fraud.[3] In Farrington's case, however, the $20,000 Citibank check itself was criminally derived property with which Farrington engaged in a monetary transaction by

[3] The court in *Johnson*, however, noted that if the defendant "had first obtained the funds and then deposited them himself," this would have *"clearly violated § 1957*." *See Johnson*, 971 F.2d at 569 (emphasis added).

depositing the check into his company's Chase account and thereafter writing a check on that account to a co-perpetrator. Accordingly, the government carried its burden and the evidence supports the jury's verdict finding Farrington guilty of money laundering.

III. CONCLUSION

The Court, when considering a motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, must view the evidence "in the light most favorable to the prosecution" and "must draw all reasonable inferences therefrom in the government's favor," giving deference to the jury's findings. *United States v. Ashfield*, 735 F.2d 101, 106 (3d Cir. 1984). The defendant must overcome an even higher burden when moving for a new trial pursuant to Federal Rule of Criminal Procedure 33. The Court may grant a motion for a new trial only "if the interests of justice so require." Having reviewed the evidence in the light most favorable to the government and drawing all inferences in favor of the government, the Court finds that the evidence presented at trial fully supported the jury's verdicts finding Farrington guilty of both bank fraud and money laundering. Clearly, the

interests of justice do not require a new trial. An appropriate order is attached.

ENTERED this 27th day of January, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____
Deputy Clerk

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v.	)	
RAPHAEL FARRINGTON and TERRANCE GROSVENOR,	)	
Defendants.	)	

ORDER

For the reasons set forth in the accompanying memorandum of even date, it is hereby

ORDERED that defendant Raphael Farrington's renewed motion for judgment of acquittal and motion for new trial (docket # 183) is **DENIED**.

ENTERED this 27th day of January, 2000.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
ORINN ARNOLD
Clerk of the Court

By:_____
Deputy Clerk

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